

**U. S. House of Representatives  
Committee on Resources  
Subcommittee on Water and Power**

*Oversight Hearing on The Bureau of Reclamation's 21st Century Challenges in Managing,  
Protecting, and Developing Water and Power Supplies*

Testimony of Bennett W. Raley  
April 5, 2006

Mr. Chairman, Members of the Committee, thank you for your gracious invitation to testify today. I am particularly grateful that you have taken the time to consider the important issue of how the Bureau of Reclamation should prepare itself to serve the American people in the 21st Century. I have attached to my remarks a copy of a July 19, 2005 letter to the Chairman of the National Academy of Sciences Committee on *Managing Construction and Infrastructure in the 21st Century Bureau of Reclamation*, which I would request be submitted for the record along with these remarks. This letter recounts some of the history that led to the request to the National Academy for a review of the structure and focus of Reclamation.

The Committee's Report outlines a number of areas where Reclamation can, if it chooses to act boldly, improve its ability to fulfill its mission of delivering water and power in the 21st Century. Reclamation is a "can do" agency that is capable of undertaking the difficult task of change. However, success will require a great deal of courage on the part of Reclamation, as it will not be easy for an institution with as much history as Reclamation to conclude that substantial portions of existing capabilities are no longer required.

Simply put, if Reclamation is to repeat in the 21st Century its proud record of success since 1902, it must recognize that the 21st Century will not be a repeat of the past century. One hundred years ago, there were very, very, few state and local entities in the West with the capability to build, operate, and maintain sophisticated water supply projects. Today, Reclamation's legacy includes not only hundreds of water supply projects, but also many water districts that have capabilities that did not exist one hundred, or even fifty, years ago. Throughout most of the last century, there were very few entities other than Reclamation that had the capability to finance and build complex water supply projects. Today, most water supply projects are either funded from nonfederal sources or have substantial nonfederal cost share components. And while the explosive growth of the American West will guarantee that new water projects will continue to be built, only a portion of those projects will be built by Reclamation.

Reclamation should view the emergence of state and local capabilities as one of its greatest successes – it has lead the way and taught others how to do more for themselves. The challenge for Reclamation is to shift from a role where it was essentially the dominant provider for planning, designing, financing, building, operating, and maintaining water supply projects in the West to a role that recognizes that much of what it did over the past century can and will be done by state and local entities and the private sector. To be blunt, Reclamation is often too expensive, too slow, and too autocratic when it comes to the design, procurement, and

contracting for construction work on existing and new facilities. Much of this problem is attributable to Reclamation's desire, as an institution, to protect FTE's and budget associated with construction activities in general and in particular with respect to its Technical Services Center in Denver.

Reclamation clearly needs to retain some engineering and other expertise relating to all aspects of water supply infrastructure. However, if Reclamation is to meet the challenges of the 21st Century, it must shift from its historic role as a construction entity to one that provides world-class "construction management" for work that is performed by others. Reclamation should also look for opportunities to shift responsibility for the day-to-day operation, maintenance, and rehabilitation of existing water and power facilities to qualified project beneficiaries.

I believe that *Reclamation's Managing for Excellence – An Action Plan for the 21st Century Bureau of Reclamation* provides a thoughtful and unexpectedly substantive plan for responding to the Report by the National Academy. Reclamation has also taken the lead to initiate discussions with the Northern Colorado Water Conservancy District regarding the potential transfer of responsibility for operation and maintenance of the power features of the Colorado-Big Thompson Project to the District and local preference power customers. Reclamation deserves much of the credit for the development of the Northern District's current capabilities and for the success of the Colorado-Big Thompson Project. Reclamation's leadership in considering whether additional responsibilities can be transferred to local project beneficiaries represents a very hopeful sign that it is indeed serious about considering new arrangements for a new century. This effort will also serve to help us all develop the concepts and institutional arrangements that will allow more efficient OM&R of the Colorado-Big Thompson Project while preserving federal authority and appropriate review over this successful Reclamation project.

At the beginning of my testimony, I expressed my appreciation for this Committee's attention to this important issue. My reason for doing so is simple – While I believe that many in Reclamation are serious about reformulating Reclamation capabilities to meet the challenges of this century, the reality is that without help and encouragement from outside, the inevitable inertia and resistance to change will stall and minimize reform. Your continued attention will support the many Reclamation employees who are proud of what they do but understand that the last century is not the model for this one. I would also observe that it is important that we define "success" for this effort because it would be unfair to ask Reclamation to change if we do not have meaningful, defensible goals for the effort. While I fully expect that others will be able to improve on my "tests for success", I offer the following criteria that we should use to determine whether the time and money that will go into implementing Reclamations' *Managing for Excellence* response to the National Academy Report will have been a worthwhile investment.

1. Reclamation adopts a policy that project beneficiaries who pay for 50% or more of specific work can elect to use District personnel or private consultants for design, procurement, construction, and contract and construction management.
2. Reclamation uses "performance based" instead of "design based" standards for

construction work.

3. Standards for construction and O&M used by Reclamation are based on an assessment of the relative risk, consequences of failure, marginal return, and subject to appeal to policy level
4. Reclamation adopts GPRA Goals that require transfer of O&M for an increasing percentage of Reclamation facilities to project beneficiaries.
5. Reclamation adopts GPRA Goals that establish minimum percentage of planning, design, procurement, construction and contract management to be performed by project beneficiaries or outsourced.
6. GPRA Goals incorporated into SES Performance Reviews.
7. ABC Accounting at Project level available to Project beneficiaries by job classification and specific task - "Transparency".
8. Reclamation adopts Scenario 2 or Scenario 3 from NRC Report.
9. Total Reclamation Workforce is reduced by other than the rate of attrition - "Rightsizing".
10. Reductions at the Denver TSC are real and not achieved by reassignments to the Regions or reclassifications of existing job categories.

I would invite this Committee to modify and improve on this list. I also believe that it is important that we recognize what these measures would do and not do. These measures are intended to preserve Reclamation's role in supervising federally owned water projects – they can be implemented without the need for a transfer of title and would not affect, in any way, the requirements or application of federal laws such as the National Environmental Policy Act and the Endangered Species Act. These measures would allow Reclamation to focus scarce human capital resources on "inherently governmental" activities that cannot and should not be delegated to local project beneficiaries. Finally, they would not conflict with the need for Reclamation to preserve technical capabilities required for circumstances when Reclamation will be the lead for construction activities, nor would they conflict with the enhancement of Reclamation's construction management activities.

In today's fiscal reality, it is in the best interests of everyone for Reclamation to devote scarce federal dollars to tasks that others cannot perform, and for Reclamation to be able to supervise and provide accountability for public funds that are invested in federal projects while maximizing the role of other competent entities in the operation, maintenance and rehabilitation of the irreplaceable investment in water supply infrastructure in the West.

Reclamation has a long and proud history of excellence. I am very proud to have been associated with Reclamation in my career. None of my remarks should be construed to be a

criticism of Reclamation employees, or for that matter of Reclamation itself. The need for change does not mean that what came before was wrong or misguided. Sometimes, as is the case with Reclamation today, institutions must change to meet the evolving needs of the people they serve.

Thank you for your patience today.

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**JULY 19, 2005**

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Re: Organizing to Manage Construction and Infrastructure in the 21st Century Bureau of Reclamation, Project Identification Number: BICE-J-04-01-A

Dear Dr. Mitchell;

I was the Assistant Secretary for Water and Science, Department of the Interior from July 17, 2001 to December 3, 2004. I thought it might be of some interest if I relayed to the Committee the history of and reasons for the request for a Review of Reclamation by the National Research Council, as well as some observations on the issue before the Committee. Of course, I no longer speak for the Department and the thoughts expressed in this letter are mine alone.

By way of introduction, I have been around Reclamation and western water issues for 38 years, almost 25 of which have been spent working as a lawyer for water users and water districts with an ongoing relationship with Reclamation. I have also worked on United States Senate staff on two occasions, and have served as a Special Assistant Attorney General for a western state in connection with matters that are closely related to federal Reclamation law and projects.

In summary, I agree with a letter recently sent by the Family Farm Alliance to United States Senator Pete Domenici that stated that "the Bureau of Reclamation must focus on fulfilling its core mission of delivering water and power in accordance with applicable contracts, water rights, interstate compacts, and other requirements of state and federal law. Essential components of the core mission are: 1) providing for the operation and maintenance of existing facilities that are likely to remain in federal ownership; and 2) providing for the rehabilitation and replacement of infrastructure that is likely to remain in federal ownership. Inherent in this definition of core mission is the need to prioritize the expenditure of federal funds and other resources of the Department of the Interior." It is critically important that Reclamation position itself to achieve this goal in the most cost-effective manner possible.

The world has changed since 1902, and many water users are no longer dependant on the federal government to finance and construct complex water supply projects or facilities. Were it not for the unfortunate fact that the federal government has retained title to far more Projects and facilities than was originally envisioned by the Reclamation Act, water users would proceed

independently with the planning, design, construction, and operation of many facilities that replace, modernize, and enhance existing Projects. If Reclamation is to achieve the goals outlined by the Family Farm Alliance, it must accept the reality that the Reclamation role in construction projects that are primarily funded by water users should be limited to the development of design standards, supervision of work to ensure that the design standards are met, and accountability for public funds expended for these projects. Reclamation must also recognize that water districts and the private sector have engineering and other capabilities that are equal to or exceed those remaining within the agency and which can perform project design, contracting, construction, and related functions in a more cost efficient manner.

## **BACKGROUND**

Let me start with by observing that the request did not derive from a desire to have the Committee engage in a wide-ranging discussion of what the mission of the Bureau of Reclamation should be in coming decades. The Department had defined the “core mission” of Reclamation as “delivering water and power” in accordance with legal requirements of state and federal law. That definition, when combined with the strategic planning and budget processes of the Department, provided Reclamation with direction from the Administration regarding its mission. This definition of “core mission” was intentionally pragmatic and limited in scope in order to avoid “mission creep” and to provide a basis for a disciplined focus and prioritization of Reclamation resources and efforts. This definition of core mission was further explained internally and externally by observing that the existing and foreseeable budgets of Reclamation would not likely be adequate to provide for the operation, maintenance and replacement of existing facilities, meeting the mandatory requirements of Biological Opinions issued under the federal Endangered Species Act, and funding measures security measures required by the post-11 September environment. The challenge to those who wanted to spend money on other aspects of the Reclamation Program not included within core mission was to justify taking funds away from these priorities for another objective.

In addition, Secretary Norton’s Water 2025 Initiative defined the role of Reclamation from a substantive or philosophical perspective. See <http://www.doi.gov/water2025/>. Certain aspects of Water 2025 may be relevant to your Review. Water 2025 intentionally avoided the classic approach of a “sweeping study” combined with a “grand pronouncement” of a government program to solve western water conflicts. Water 2025 instead focused on the demographic, hydrographic, and fiscal realities that will shape western water policy for coming decades, and identified pragmatic “tools” that can be implemented to minimize or avoid water supply related crises that will otherwise occur in the next 25 years. These tools – water conservation and increased efficiency, markets, collaboration (specifically long-term biological opinions under the ESA), technology (specifically ocean and brackish groundwater desalinization), and system optimization were selected because of their capacity to be implemented and make progress in an environment characterized by very limited federal funds and an absence of public and political support for the construction of new infrastructure that would increase the available water supply on a programmatic or large scale basis.

It may be of interest to note that the success of Water 2025 does not depend on the maintenance or expansion of the Reclamation Program at or beyond current levels. This assumption was a

reflection of the reality that the Reclamation budget is unlikely see a substantial and sustained increase regardless of which party controls the legislative or executive branches of the federal government.

I have no doubt that the Committee would be capable of producing a thoughtful and provoking analysis of what the Reclamation mission should be in the future. However, unless that vision is accompanied by the implementation of a parallel political strategy, it is likely that such an effort will join other similar attempts over the years as they gather dust on agency shelves. In my view, the Committee will provide a great service if it instead focuses its talents on the more mundane but critically important issue of assisting Reclamation in reorienting its program to deal with the fact that fiscal and political realities indicate that its role in the 21<sup>st</sup> century will not be a reprise of its role in the 20<sup>th</sup> century.

The request for the Review evolved from the consideration of a number of factors. First, President Bush has defined Presidential Management Initiatives that are to be implemented by all federal agencies. See <http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf>. Two PMI's, Human Capital Management and Competitive Sourcing were particularly relevant. The focus on Human Capital Management was not particularly threatening to Reclamation, as it recognized the challenges associated with its aging work force that was developed to meet the demands of a prior era and the difficulty of recruiting for an agency with a static mission. However, as was likely the case for all federal agencies, the PMI on Competitive Sourcing was viewed as a threat to existing personnel and programs. Second, senior Department officials had requested that all bureaus identify existing programs that could be cut or eliminated. Not surprisingly, this request was viewed with great suspicion, and the response was at best slow and begrudging. This attitude was captured by the response to a question regarding what existing programs and capability were necessary to fulfill Reclamation's "core mission" - the reply was that "it is all core mission." Likewise, the instinctive response to budget pressures was to preserve all programs and capabilities by allocating whatever shortfall was at issue across all programs in order to avoid "zeroing out" lesser priorities. Third, a review of the reasons for Reclamation's discovery that the costs of the Animas-La Plata Project were approximately 50% over prior estimates concluded that one of the contributing factors was that Reclamation did not have an effective "construction management" program in place. This failure was not solely the fault of Reclamation, as senior management in Interior (myself included) did not focus on the fact that 1994-5 "sunsetting" of the Reclamation Instructions was not replaced by a comparable system that provided for a chain of command, responsibility, and authority over construction management activities. Members of Congress who were very unhappy with the Animas-la Plata experience were made aware of this Review and there is likely some expectation that it will address some of the issues presented by that experience. I assume that you have been fully briefed on this issue, its potential relevance to your work, and expectations that may exist in Congress in this regard.

A reflection on these factors resulted in several intermediate-level conclusions - it was unreasonable to expect Reclamation (or any other agency, for that matter) to provide a coldly analytical assessment of what aspects of its existing program were not essential to fulfilling a limited core mission (in part because of the unavoidable strategic and tactical "gaming" aspects of the development of the budget inside Interior, inside the Administration, and in Congress); it

was unreasonable to expect Reclamation to provide a dispassionate assessment of what aspects of its core mission must be performed by Reclamation personnel and what aspects of its core mission could be performed by others; and the private sector was likewise not particularly well suited to an objective review of these issues. The National Research Council Board on Infrastructure and the Constructed Environment was then identified as an organization that could provide this type of review and analysis because of its perceived ability to act independent of any self-interest and provide a disciplined response to the requested Project Scope.

## **PROJECT SCOPE**

The Office of the Assistant Secretary for Water and Science drafted the Project Scope<sup>1</sup> to enable the Committee to focus its efforts on the question of what capability Reclamation needs in order to fulfill its core mission. The inclusion in the Project Scope of an explanation of the “essential components” of Reclamation’s core mission was an attempt to provide a tiered hierarchy of needs that the Reclamation Program must meet under any foreseeable combination of political and fiscal scenarios. I use the term “Reclamation Program” here as an intentionally broad term that can encompass activities performed by Reclamation employees as well as activities performed by others in connection with Reclamation Projects or activities.

The three tiers of this hierarchy reflect the base case for the Reclamation Program, starting with the definable and unavoidable reality of operating and maintaining existing projects, moving to the foreseeable, but less predictable need to rebuild existing infrastructure, and concluding with the likely, but even less predictable need to provide for new project construction. The philosophy reflected in this hierarchy is that the first priority of the Reclamation Program should be to maintain the capability required by the essential components or base case for the future of the Reclamation Program, and that the development and maintenance of additional capabilities should clearly be subordinated to the need to protect priority capabilities. Implicit in this formulation of Project Scope is a concern that an attempt by Reclamation to develop and maintain capabilities beyond those required for the base case will, in a limited budget environment, put at risk Reclamation’s ability to fulfill its core mission in an effective manner.

## **ISSUES FOR CONSIDERATION BY THE COMMITTEE**

**Reclamation is unique in that it has a greater degree of “user funding” for its programs than do other federal agencies.**

One might assume that everything that Reclamation currently does is in fact essential for it to perform its core mission. However, I am of the opinion that there is great risk to Reclamation if this position prevails.

As the Committee has already heard, Reclamation is somewhat unique among federal agencies because much of its work is funded directly or indirectly by its water and power customers. Some of this work is funded directly by the users, and Congress funds some of it subject to the

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<sup>1</sup> See

<http://www4.nas.edu/webcr.nsf/5c50571a75df494485256a95007a091e/09caed00ca8dce0b85256f8d00601302?OpenDocument&Highlight=0,reclamation>



requirement that water and power users repay the federal treasury over time. Consequently, there is a far greater degree of sensitivity to and scrutiny of Reclamation staffing decisions than exists for other federal agencies. This level of sensitivity and scrutiny is likely to intensify in coming years as the relative proportion of federal dollars invested in water supply infrastructure decreases and results in a correspondingly greater burden on already scarce non-federal funding sources. This trend will mean that there will be a greater proportion of direct funding by users and a relative decrease in Congressional funding subject to repayment obligations. This trend is of great importance to the matter before the Committee, as it is one thing for an agency to justify the maintenance of human capital or other program resources when it is the dominant fiscal force or when the costs of doing so are born by taxpayers, and quite another thing to attempt to preserve or build a program or when the costs are paid by specific project proponents who do not want to pay for the maintenance of additional capacity.

Any attempt by Reclamation to maintain internal capability beyond that required by the base case and for which the water and power users are willing to pay is likely to at a minimum create political and other tensions between Reclamation and its constituency, and may result in direct intervention by Congress on behalf of those who are being asked to pay for the additional capacity. Moreover, attempts to shield this capacity from these pressures by funding the additional capacity through non-reimbursable sources are not likely to succeed in the long term because of the operation of administration and congressional funding caps and the inability of Reclamation to prevent excess capacity from being billed to reimbursable accounts. Concerns regarding Reclamation's ability to provide engineering and related services in an effective manner are surfacing with increasing frequency with both water users and Congress. There are several recent cases of attempts by water users to seek legislation that would mandate a role for qualified districts and private consultants, and a senior Senator recently circulated legislation that would fund projects through the Reclamation budget but require that Reclamation contract with the Corps of Engineers to do the work.

On numerous occasions over the past 6 months I have had the opportunity to talk to water district representatives about their perceptions of the broad issue of Reclamation costs and overhead. Several unmistakable patterns characterize these conversations:

- With a few exceptions, water managers that work with Reclamation like and respect their Area and Regional Offices. I also have a high personal regard for all of the Regional Directors, and while I have not met or worked with all of the Area Offices, most of them are very capable. In addition, I grew to appreciate the talents and hard work of a large number of Reclamation employees throughout the agency, and appreciate my having the opportunity to serve with them.
- Water users complain bitterly about virtually all aspects of the work performed by the Denver Technical Services Center. To quote a recent conversation "as soon as Denver got involved costs skyrocketed and the work ground to a halt." I want to make it clear that in my personal opinion this problem is not Mike Roluti's fault, nor am I directing criticism at individual employees within the Denver Technical Services Center. The Denver Center is an institutional problem that is beyond the capacity of the direct supervisor or individual employees to fix.

- Water users believe that Reclamation has lost substantial components of the engineering and other construction-related expertise that it once had as an inevitable result of retirements, reductions in funding and the dearth of new federal Reclamation Projects, and the emergence of a cadre of highly qualified engineering personnel within water user districts and the private consulting sector. However, water users are unwilling to pay for or otherwise support the reacquisition of this capacity within Reclamation because they believe that the strictures and limitations inherent in the use of federal agencies will mean that design, procurement, and construction functions can almost always be performed cheaper and more efficiently by districts or private consultants under appropriate Reclamation supervision.

Although water users complain bitterly about the cost of and services provided by the Technical Services Center, most are unwilling to complain publicly because of a fear of retaliation by Reclamation, and a concern that their Area Offices and Regional Office will feel compelled to defend the Denver Center. However, both the number and substance of these discussions lead me to conclude that the dissatisfaction with the Denver Technical Services Center is widespread and substantive in nature. It is also worth noting that neither I nor others who have been exploring this issue have found water users that thought that the Denver Center was great and who did not want the option to do the work themselves or via qualified consultants. That does not mean that there is not, somewhere, a District that is very happy with the Technical Services Center or which does not want to have the option to use non-federal capacity - I just have not found them.

While I do not have hard data to support this conclusion, I believe that there is a particularly pernicious dynamic at work that almost guarantees that the Technical Services Center will lurch from one conflict to another. Simply put, the official line is that the TSC is “self-funded.” In order to preserve the appearance of a need for the capacity at the TSC, Reclamation as an institution has a strong incentive to force work to TSC in order to maintain high utilization rates. Several recent examples of Reclamation’s attempt to force water users to use TSC provide a basis for this conclusion. However, because it also appears that there is not enough work to really keep all of this capacity working in an efficient manner, I fear that unused capacity tends to be assigned or drift to whatever project can bear the costs.<sup>2</sup> When water users become aware of excess staffing or unacceptably high project cost estimates, Reclamation responds by “bargaining down” the cost of the work under scrutiny, at times by significant margins. Reclamation’s routine willingness to reduce the cost of most projects that come under scrutiny provides strong evidence of a practice of overstaffing or over-estimating for projects in general. Stated another way, since Reclamation is not a profit-making entity, it cannot be achieving these reductions by taking a lesser profit, and must be reducing its costs by either eliminating excess staffing or having other projects subsidize the cost of the project under scrutiny.

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<sup>2</sup> It may well be that the problem of overstaffing is the collective result of well-intentioned TSC employees who want to contribute, want to be productive, and as a consequence show up to work on whatever projects are at hand. This dynamic can explain numerous examples of TSC staffing or involvement in a project that would not be accepted in the private sector because of the need to be price competitive, make a profit, and satisfy cost conscious clients.

I do believe that the TSC has been able to manage the costs of specific projects when under scrutiny and significant pressure. However, I am fearful that the result is that the unutilized capacity shifts to a project not under scrutiny and the problem is replicated elsewhere. Thus, a *de facto* policy of “overstaff until caught because we have to show full utilization” means that one projects’ gain in cost control results in the shift of costs to less vigilant projects until they too come under scrutiny. The consequence of this destructive cycle is a loss of confidence in Reclamation.

One aspect of the institutional problems associated with the TSC is that it appears to operate outside of the normal Reclamation chain of command. Area Managers and Regional Directors are responsible to water users for costs associated with their respective offices. However, the TSC reports to the Commissioner outside of the Area Office/Regional Director structure. It appears that Area Offices and Regional Directors do not directly control staffing and other decisions that affect costs associated with work performed by the TSC on Projects that are otherwise within their jurisdiction. This mismatch between responsibilities and control over work may well put an Area Manager, who must deal with water users on a daily basis, in the impossible position of attempting to control costs in a parallel component of Reclamation that is perceived to be directly responsible to the Commissioner.

I do not believe that it is in Reclamation’s long-term interests to continue a political battle with its constituents in order to preserve or enhance capacity because the battle will damage Reclamations’ credibility with water users and with Congress.

**The critical issue before this Committee is to identify which capabilities must Reclamation maintain within the agency and which capabilities can be provided by qualified non-Reclamation entities.**

The importance of defining the capabilities that should be maintained within the Reclamation Program turns on the answer to the question of what capabilities must be performed by Reclamation and which can be performed by qualified non-Reclamation entities. If Reclamation maximizes the use of non-Reclamation capabilities, it can add or eliminate capabilities using other federal agencies such as the Corps of Engineers or qualified non-federal contractors as needed. In this scenario the capacities of the Reclamation Program can fluctuate with actual demands for which appropriate funding is provided. Capacity that is maintained or added because and only for so long as someone wants it and will pay for it, whether that person be Congress or a water user, is unlikely to be controversial. If, however, Reclamation attempts to maintain internal capacity beyond the minimum required to meet anticipated needs, the question becomes far more important, as any over-estimate of the capacity required will be difficult to correct and become either a source of conflict with water users or a drain on available non-reimbursable fiscal resources.

I strongly believe that Reclamation should adopt the approach of tailoring its personnel needs and internal program components to maximize the use of non-Reclamation capacity. This conclusion is not based on a belief that Reclamation personnel are somehow less qualified than the alternatives. This conclusion is directly based on the unique nature of Reclamation as a user-

funded agency. This reality makes it imperative that Reclamation be able to tailor its capacity to user demands and available funds far more quickly than is required for other federal agencies.

At a programmatic level, I would suggest that there are two broad areas and one specific program that define the appropriate role for Reclamation employees, and that activities outside of these areas should be presumed to be appropriate to be performed by non-Reclamation entities. The two broad areas that should be performed by Reclamation employees are management of Reclamation Projects and construction management, and the specific Program is the Safety of Dams Program. This conclusion is consistent with conclusions reached in **Outsourcing Management Functions for the Acquisition of Federal Facilities (2000)**, Commission on Engineering and Technical Systems:

The committee reviewed federal legislation and policies related to inherently governmental functions—a critical determinant of which activities federal agencies can and cannot outsource. An *inherently governmental function* is defined as one that is so intimately related to the public interest that it must be performed by government employees. An activity not inherently governmental is defined as *commercial*. The committee concluded that, although design and construction activities are commercial and may be outsourced, management functions cannot be clearly categorized.

<http://www.nap.edu/books/0309072670/html/3.html>. (Emphasis added). While the scope and focus of the inquiry of the Commission was not identical to that of this Committee, the context was similar enough to make its conclusion relevant here.

**Management of Reclamation Projects.** As is recognized by the above quote, within the broad category of management of Reclamation Projects there is a range of circumstances that should govern the level of management that is required to be performed by Reclamation personnel. For example, some water Districts have financial, managerial, engineering, and other capabilities that rival that of Reclamation (in some cases because the District personnel were previously Reclamation personnel). Other Reclamation Projects may require a far more extensive Reclamation presence because of conflicts relating to Project operations, sheer Project complexity, or a lack of capacity within the local District.

Consequently, the capacity required for Project “management” will vary widely between Reclamation Projects. This variance is likely already captured to some degree and reflected by staffing levels within the existing Regional and Area Offices. The Denver TSC does not and should not perform “management” functions, as this would be both inefficient and inconsistent with Reclamation’s “line authority” approach. Similar conclusions can be reached about other aspects of Reclamation’s Denver Service Center. While well intended and the home to many fine Reclamation employees, the Denver Service Center does not fit well within the strong “line authority” structure of Reclamation. Simply put, the chain of command for Reclamation runs from the Commissioner to the Regional Directors to the Area Offices. Notwithstanding this clear line of authority that is followed in theory and practice, the Denver Service Center is staffed by an inordinate number of Senior Executive Service employees who have, over time, had a very difficult time finding a comfortable “fit” or role within the Reclamation management structure.

A review of the list of “Programs, Initiatives, and Activities” that are largely carried out from the Denver Service Center includes a number of functions that may well fall outside of a careful definition of “management” or an “inherently governmental activity associated with Reclamation, including; the Building Seismic Safety Program, aspects of the Cultural Resources Program, DataWeb, the Fisheries Applications Research Group, substantial aspects of the Geotechnical Engineering Groups, the History Program, aspects of the Hydroelectric Research and Technical Services Program, aspects of Infrastructure Services, substantial aspects of the International Affairs Office, the entire JobCorps Program (regardless of whether Reclamation is fully reimbursed for its costs), the Materials Engineering and Research Lab, all aspects of the Museum Property Program not mandated by federal law, the Remote Sensing and GIS Program, the Science and Technology Program, aspects of the River Systems and Meteorology Group, aspects of the Research and Natural Resources Program, the Science and Technology Program, aspects of the Sedimentation and River Hydraulics Group, the entire Technical Services Program except for the Dam Safety Group, aspects of the Water Resources Research Laboratory, and aspects of the Water Resource Services Program. See, <http://www.usbr.gov/main/programs>.

I realize that there are overlaps and other inconsistencies within this list, but it is what Reclamation uses to describe its Programs. Much of this work is important, some of it is required by statute, many of the people involved are very, very good, and some of them are (or at least were) personal friends. However, the value of this work and the people that perform the work does not make these programs essential management functions or an “inherently governmental activity”, nor does existence of a statutory requirement require that the work be performed by, as opposed to supervised by, Reclamation employees. Other federal agencies, the private sector, and universities can also perform much of this work. I would be very surprised if a careful and objective review of the existing capacity of the Denver Service Center did not conclude that a minimum of 30% was either not required to fulfill Reclamation’s core mission or could be performed on an as-needed basis by non-Reclamation entities.

**Construction Management.** The Animas-la Plata experience highlighted the consequences of the decision 10 years ago to sunset the Reclamation Handbook without creating a replacement structure for the management of construction projects. Reclamation will be responsible to the public, to Congress, and to water users for a wide array of construction activities in the future. These activities will include both the replacement of the infrastructure completed over the past century as well as the construction of new components and facilities. While there is no inherent reason why Reclamation must perform research, design, contracting, and construction work, it must be able to 1) account for all funds associated with these projects and ensure that they are spent for authorized purposes, and 2) ensure that the work is performed in a manner that meets applicable engineering or other standards. Simply put, I believe that under any foreseeable future scenario Reclamation will need a strong construction management program that includes both fiscal and engineering components. However, these components should be deployed to set standards in advance, monitor compliance, and report on results. Performance of these functions does not, absent a statutory requirement, mean that Reclamation employees must design projects, serve as the “general contractor,” perform research, or serve as the day-to-day construction manager. Qualified water districts and the private sector can perform each of these functions under Reclamation supervision. I also recognize that in some unique cases, like the Animas-la

Plata Project, the number of participating entities and tribal trust aspects of the Project make it appropriate for Reclamation to serve in a more expansive role than would otherwise be the case. However, these unique cases will not characterize the role of Reclamation in the future.

I have heard on occasion that the existence of dam safety or other aspects of particular projects require that Reclamation personnel perform all of the design work. This assertion is not persuasive, as there is no rational reason why the fact that a professional engineer is employed or not employed by Reclamation is relevant to the exercise of his or her professional engineering judgment. Reclamation itself hires outside consultants to assist it in dam safety peer reviews, and some of the outside consultants were trained by Reclamation. The quality of the engineer is determined by education, intelligence, and experience, not employment status. This position inappropriately confuses the appropriate role of establishing appropriate performance or other standards to meet minimum engineering requirements with the actual design and construction of the facility. To be blunt, the assertion that Reclamation is uniquely qualified to design structures that have public safety implications is not credible and does a great disservice to the many highly qualified engineers that work elsewhere in the profession.

I believe that it is well accepted that Reclamation should be responsible for establishing appropriate design standards for work on federally owned structures. However, I would suggest that it would be helpful for the Committee to make recommendations regarding the manner in which these design standards are established, and a process for resolving disagreements between Reclamation engineers and qualified non-Reclamation engineers regarding the appropriateness of particular standards. In particular, I and others have at times perceived that Reclamation reflexively “over-designs” project elements based on an institutional philosophy that assumes that facilities should be designed using the most conservative design standards. While this approach may be appropriate for federally funded work and for work with material public safety issues, it is not necessarily appropriate for work funded by water users that does not present serious public safety risks. These issues can quickly move beyond engineering criteria to fundamental policy decisions that implicate the balancing of risks in an environment where financial resources are limited. One suggestion would be to provide for a quick “mini-peer review” involving outside consultants that project sponsors could utilize for disputes. However, the success of this approach would require Reclamation to welcome such a review instead of viewing it as a personal or professional attack.

**The Safety of Dams Program.** While an intellectual case can be made for considering the Safety of Dams Program to be just another engineering exercise, I believe that the unique nature of this program justifies the maintenance of the required expertise within Reclamation. Public safety is directly affected by this Program, and unlike other aspects of the Reclamation Program, there is a need for Program-wide uniformity. This Program also has significant national security implications. However, the Horsetooth Reservoir case study previously submitted to the Committee by Mike Applegate reveals that while the Safety of Dams Program may be technically strong, it may also have serious management flaws. Simply put, the fact that even after a roughly 50% reduction in costs as a result of Reclamation’s Value Engineering Program, the non-construction costs were equal to approximately 70% of the construction costs. This is far above any standard ratio in the industry. Moreover, the unexplained reduction of project costs from \$77 million to \$56 million creates credibility issues for the SOD Program. Finally,

the inability of Reclamation to provide a final accounting for project costs 18 months after completion of the project borders is deeply troubling. While my trust in Reclamation is substantial, any government program that cannot or will not provide a public accounting for how it spent \$56 million of public funds is one bad actor away from a disaster. Reclamation can and should provide greater transparency and accountability for its expenditures of public funds.

Thank you for considering these comments.

Sincerely yours,

Bennett W. Raley

**DISCLOSURE REQUIREMENT**  
Required by House Rule XI, clause 2(g)  
and Rules of the Committee on Resources

**A. This part is to be completed by all witnesses:**

1. Name: Bennett W. Raley
2. Business Address: 1120 Lincoln St. Suite 1600
3. Business Phone Number: 303.217.0862
4. Organization you are representing: Northern Colorado Water Conservancy Dist 1
5. Any training or educational certificates, diplomas or degrees or other educational experiences which add to your qualifications to testify on or knowledge of the subject matter of the hearing:  
Nothing Remarkable
6. Any professional licenses, certifications, or affiliations held which are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing:  
Nothing Remarkable
7. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:  
DOI, 2001-2004
8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:  
N/A

**B. To be completed by nongovernmental witnesses only:**

1. Any federal grants or contracts (including subgrants or subcontracts) from the Department of the Interior which you have received since October 1, 2000, including the source and the amount of each grant or contract:  
None
2. Any federal grants or contracts (including subgrants or subcontracts) the Department of the Interior which were received since October 1, 2000 by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract:  
None to my knowledge
3. Any other information you wish to convey which might aid the members of the Committee to better understand the context of your testimony:

